IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 30TH OCTOBER 2007 / 8TH KARTHIKA 1929

Crl.Rev.Pet.No. 1138 of 2000()

CRA.193/1998 of SESSIONS COURT, THRISSUR
CC.52/1995 of JUDL. MAGISTRATE OF FIRST CLASS COURT, IRINJALAKUDA

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REVN. PETITIONER:

LAKSHMI, W/O.VELAYUDHAN,
AGED 63 YEARS,
VELIYATH HOUSE,
MURIYAD, THRISSUR DISTRICT.

BY ADV. SRI.V.M.KRISHNAKUMAR
SMT.P.A.ANITHA

RESPONDENTS:

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1. RAVINDRAN, S/O.SANKU,
ODAYIL HOUSE, MANAVALASSERY VILLAGE,
THRISSUR DISTRICT.

2. STATE OF KERALA REPRESENTED BY
PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.G.SREEKUMAR (CHELUR)
PUBLIC PROSECUTOR, SRI AMJAD ALI

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 30/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CRL.M.P.NO.5972/2000 IN CRL.R.P.NO.1138/2000

DISMISSED.

SD/- K.R.UDAYABHANU, JUDGE

30/10/2007

\\TRUE COPY//

K.R.UDAYABHANU, J.

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Crl.R.P.No.1138 of 2000-C

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Dated this the 30th day of October, 2007

O R D E R

The revision petitioner is the accused in C.C.No.52/1995 in the court of the Judicial Magistrate of the First Class, Irinjalakuda, who stands convicted for the offence under Section 420 I.P.C and sentenced as modified by the appellate court to undergo imprisonment till the rising of the court and to remit a compensation of Rs.25,000/- and in default to undergo simple imprisonment for three months under Section 357 Cr.P.C. It was also directed that out of the compensation amount Rs.23,000/- is to be paid to the complainant as compensation.

2. The case arose out of a private complaint filed and taken cognizance of by the court below. The case of the complainant is that the defendant who owned 19 cents of property in Sy.No.516/8 of Manavalassery Village sold the same to the complainant vide document No.2671/1994 of Irinjalakuda Sub Registry. Sale consideration paid by the complainant to the de facto complainant was Rs.10,000/-. At the time of sale of the property the accused had convinced the complainant that there was no encumbrance to the

property. Subsequent to the execution of the sale deed it was realised that execution proceedings with respect to the property is pending and vide decree in O.S.No.1326/1991 instituted by one Rajan, who is the relative of the accused, the property has been subjected to the charge for the realisation of the decree amount. He came to know of the above proceedings only on 07/12/1994.

3. The evidence adduced in the matter consisted of the testimony of PWs.1 and 2 and Exts.P1 to P4. Defence examined DWs.1 and 2. PW.1 is the complainant and PW.2 the witness, who allegedly took part in the pre-sale negotiations, have testified that the accused had represented that there are no encumbrances with respect to the property. The evidence of PWs.1 and 2 tallies on material particulars. The same is also supported by Ext.P1 copy of the sale deed executed by the accused wherein it is specified that the property is free from encumbrances. Ext.P2 is the carbon copy of the decree in O.S.No.1326/91 dated 28/11/1992 as per which the decree amount is Rs.12,396.99 with future interest at the rate of 6% as well as cost which is mentioned as 2440.27. The version of DW.1 the accused is that the complainant was aware of the encumbrance and that he had been appraised of the same. DW.2 has supported the version of DW.1.

In the circumstance that there is a specific recital in the sale deed executed by the accused that there are no encumbrances and in view of the concurrent findings of the courts below, I find no reason to interfere with the findings of the courts below as to the conviction entered into; conviction is confirmed.

4. The counsel for the revision petitioner/accused has sought for modification of sentence pointing out that the accused is a lady aged about 80 years.

5. It is submitted by the counsel for the first respondent/complainant that the son of the accused is a policeman and that she is having sufficient means. But considering the fact that no objective evidence has been adduced as to the amount that has been paid by the complainant to get the property realised from the encumbrance and also considering the age of the accused the sentence is modified to imprisonment till the rising of the court and to pay compensation of rupees twenty thousand to the complainant and in default to undergo simple imprisonment for three months. The revision petitioner is granted two months time to remit the amount of compensation. She shall appear before the Judicial

Magistrate of the First Class, Irinjalakuda, on 31/12/2007 to receive the sentence.

The criminal revision petition is disposed of as above.

K.R.UDAYABHANU,
Judge

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K.R.UDAYABHANU, J.

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Crl.R.P.No.1138 of 2000-C

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O R D E R

30th October, 2007